



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,545	02/17/2004	Beat B. Niederoest	00124-01040-US	7465

23416 7590 05/31/2005

CONNOLLY BOVE LODGE & HUTZ, LLP
P O BOX 2207
WILMINGTON, DE 19899

EXAMINER

TRETTEL, MICHAEL

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,545

Applicant(s)

NIEDEROEST ET AL.

Examiner

Michael Trettel

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 to 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the US patent to Weingartner et al (US 5,248,185). Weingartner shows a vehicle seat 1 that includes a foam padding 4,5 for the back rest and seat surface. Each one of the padding is formed from an open celled foam body 7 that has been treated with a fire retardant composition 8, and then covered with a high temperature mesh 9. The resulting body is then encased within an upholstery formed by a foam layer 12 and outer fabric layer 14. The foam layer 12 is treated as detailed in column 12, lines 47 to 65 to render it flame retardant. A liquid flame retardant which can contain chlorine, bromine, or phosphorus is mixed with a metallic compound such as aluminum hydroxide, which is then used to impregnate the foam layer 12. The density of the foam layer 12 is 20 to 60 kg/m³ (column 16, lines 1 to 11), which converts to 1.2~3.7 pcf. Note also that this paragraph states that a polyurethane made by Bayer can be used as the binder for the flame retardant used to treat the foam layer 12. Weingartner therefore shows all of the claimed subject matter, with the exception of the range of CFD (also known as ILD) claimed for the foam material. The examiner notes that the use of various values for CFD or ILD as a design

Art Unit: 3673

parameter is well known within the art, since this directly influences how hard or soft a foam material feels to a user. Since the applicant has not shown any particular criticality associated with the claimed range of values for CFD, it would have been within the ordinary level of skill in the art for the skilled artisan to have used the claimed range of CFD values when making the upholstery layer of the Weingartner seat. In addition to the above, the examiner also notes that the applicant is using readily available off the shelf flame retardants and binder materials as the means for treating the foam material in the claimed upholstery. See pages 9 and 10 of the specification, wherein a list of suppliers of the materials used is set forth. Since the Weingartner patent sets forth a method of treating foam upholstery materials that is quite similar to the one claimed, and since the materials claimed are readily available stock materials, it would have been obvious to the skilled artisan to have used these known stock materials in the practice of the Weingartner cushion and upholstery construction.

Conclusion

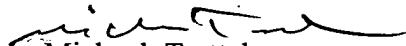
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. LaMarca, II et al, Weingartner et al (US 5,632,053), Dadgar et al, Dougan, Hurwitz, and Bell show flame resistant mattress and cushion constructions which are of particular interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

Art Unit: 3673

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (571) 272-7052. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Michael Trettel
Primary Examiner
Art Unit 3673